Committee on Resources
Subcommittee on Water & Power

Witness Statement

Prepared Statement of Kent E. Johnson

Before the United States House of Representatives

Committee on Resources, Subcommittee on Water and Power

Relating to the Proposed Transfer of Vallecito Reservoir, Colorado

February 2, 1999

I am pleased and honored to have been invited to appear before the Subcommittee on Water and Power concerning the proposed Pine River Transfer. It appears that I may have additional information which may be useful or necessary in order for the Subcommittee to make an informed decision.

As a preliminary to my opinions about this transfer, I feel that it may be useful for you to know some of my background and qualifications. I earned a B.A. in Political Science from the University of Texas and followed up with a J.D. from the University of Denver School of Law after a tour of duty in the Republic of Vietnam with the United States Army. I chose to use my skills in the natural resources and public lands arenas instead of the traditional practice of law. I am currently a licensed real estate appraiser and mediator in Colorado. My career has involved land acquisition, title work, and extensive negotiations for private industry and public agencies. I have extensive experience with public works acquisitions for parks, open space, trails, roads, easements and other public facilities. I am on the Board of Directors of the Vallecito Land Use Association, the largest public organization at Vallecito Lake, and live and own property there.

THE DOWNSIZING CONCEPT

It has been proposed by Vice President Al Gore and others that "Downsizing of the Government" would be a good idea, and a number of Bureau of Reclamation transfers throughout the West have been proposed to effect this concept. The downsizing concept appears to be a viable one, except for one persistent flaw. If each action is not reviewed on an individual basis, terrible and irreversible errors can be made which may inflict harm on the General Public and local communities. If precious national treasures are given away, it is the Nation which is harmed. If valuable natural resources are given away, it is the National Treasury which is harmed. That is exactly the problem with the transfer of Vallecito Reservoir to the Pine River Irrigation District. The studies which one would expect would have been performed to get out the facts have not been done. Indeed, it appears that the decision to transfer this reservoir has been made before any attempt to ascertain the facts has been conducted. I suggest that this testimony helps provide some of the facts which, upon proper investigation, will be shown to be true. Further, these facts demand that extensive protections for the public and the community be implemented, or the transfer simply should not be granted.

NEW FEDERAL PROPERTY ACQUISITIONS

A recent proposal of the Administration and Congress would purchase 1.3 billion dollars worth of open space lands, parks, lakes and other areas similar in nature to Vallecito Reservoir in order to preserve them for our children and grandchildren. I submit that the proposals to transfer Vallecito Reservoir will result in this unique public resource becoming privately owned and permanently degraded. Further, I think that once the public realizes what has happened, there will be an outcry to spend public funds to repurchase it in the future at a very dear price. This is an outcome which can and should be prevented. The best way to protect and preserve valuable public lands is to have the foresight not to transfer it out of public ownership.

VALLECITO RESERVOIR- AN OVERVIEW

Vallecito Reservoir is a beautiful mountain lake surrounded by tall pine and fir trees located in the San Juan Mountains of southwestern Colorado. It is located about 18 miles northeast of Durango and is nestled in a valley with views of high mountains and access to nearby wilderness areas. A year round community of over 500 lives and works near the reservoir, with this number swelling to over 3,000 in the warm months, not including the 100,000 visitors who come each year. Many lodges, restaurants and other businesses are located around the reservoir. These people depend on the reservoir for their livelihood, their homes and their recreation. U.S. Forest Service lands surround the reservoir and Wilderness Areas are within walking distance. Wildlife is abundant, with trout and pike in the reservoir, and deer, elk, and eagles easily visible to the casual visitor around the reservoir. People from all over the world come to Vallecito for a variety of purposes including fishing, boating, skiing, hiking, camping and a special kind of relaxed solitude rarely found in other, more well known, public recreation facilities. Vallecito Reservoir is a valuable public natural resource and should be protected just as carefully as Rocky Mountain Park, Yosemite or Lake Tahoe.

THE PROJECT- HISTORY

In May of 1941, the Reservoir was completed and commenced operation under the auspices of the Bureau of Reclamation under the act of June 25, 1910 (36 STAT 835). The reservoir had a project cost of $3,552,336 and holds 129,700 acre feet of water. A contract was signed with the Pine River Irrigation District (the "District") on April 15, 1940 which allowed for the District to use water from the reservoir and in return to share in a portion of the construction costs, to be paid over a 40 year period in an interest free loan. The Southern Ute Indian Tribe was also granted a one-sixth undivided interest in the reservoir and the water, which interest was paid for by U.S. taxpayers through the Bureau of Indian Affairs. Neither the enabling legislation, nor any of the contracts anticipated eventual title transfer to the District. In fact they explicitly stated that the District was only to operate and maintain the facility and would not take title. The power of eminent domain was used extensively to acquire land for the reservoir, both within the reservoir and outside it. The reservoir currently is an income producing enterprise for the U.S., with electric power sales from a hydroelectric power plant and water sales. Recreation has grown to be one of the Reservoir's most important features, also producing revenue.

THE DISTRICT

Since construction, the District has operated the reservoir, but only with substantial assistance from others, including the Bureau of Reclamation and the State of Colorado. The nature of this assistance is very large, so much so that the District needs only 3.5 employees for full operations. They employ two field hands, a clerk and a half-time superintendent who will be retiring soon. Mr. Hal Pierce, the State Water Master for this area, makes the major decisions concerning water release and distribution. The District does not even employ ditch riders for the inspection and maintenance of the open ditches, leaving that responsibility to the

State and the individual landowners. It has been said that the District has been running the reservoir for many years and should continue to do so because of its depth of knowledge concerning the reservoir, but it has been exceedingly difficult to locate the repository for this information, if it exists at all.

There are substantial costs involving the safety of the dam and other facilities that require costly inspections and periodic repairs in order to prevent a potential disaster. These costs could exceed $100,000 per year and total $1,000,000 for the major dam inspection due in the year 2000. After the transfer, these costs would be the responsibility of the District, which does not appear to have the financial capability to raise these funds. Their members and water users are the only source of income for the District, except for the relatively minimal funds raised from recreation and power. What will happen to the District in the event of a major repair or if an upgrade is needed? How much will the public and the local community suffer as a result? It is my conclusion that a public facility like Vallecito Reservoir can only be fully protected by a true public governmental entity and that the District is not capable of this level of protection.

THE TRANSFER PROPOSALS

In 1998, seven bills were introduced into Congress which would have transferred Vallecito Reservoir to the District. Passage was narrowly averted. It is expected that similar bills will be introduced in 1999. All of the bills allowed for a "quit claim deed" to issue from the U.S. based on varying conditions. Once the deed issues, the U.S. will cease to have any power to enforce plans or promises made by the District, enabling it to act as any other private owner of land, to the potential harm of the General Public and the Vallecito Community. No protections for these stakeholders have been proposed for this law other than for the District to "prepare a plan" which would propose that the District manage the reservoir in a manner substantially similar to the way it has been run previously. In other words, the bills have no "teeth" to protect the interests of the public or the community, or to enforce the plan after the transfer takes place. There was no requirement for the plan to be followed in the future and no protection against amendment of the plan. Some of the bills last year even reduced the ability of NEPA to mediate harm to wildlife and the environment.

The transfer proposes to deed title to approximately 2,720 acres, or 4.25 square miles, of land within the reservoir and an additional 930 acres, or 1.45 square miles, outside the reservoir, for a combined total of 3,650 acres, or 5.7 square miles. The additional lands were considered necessary for the construction of the reservoir, but could now be considered to be "surplus" lands which could be summarily disposed of by the District in the manners later discussed.

In addition to the land, the transfer proposals have also included other items such as recreational facilities, boat ramps, picnic tables, parking lots and valuable leases for marinas and other commercial establishments. All federally owned water rights have been specifically included in the transfer, which are currently unknown but could include future water for wildlife habitat such as in-stream flows and other purposes. Of special concern, none of the bills reserved oil, gas and mineral rights even though oil and gas production is currently nearby.

ECONOMICS

Some have stated publicly that the District has "paid" for the reservoir and therefore should get title to it. Out of the $3,552,336 construction cost in 1940, the District paid a total of $1,333,904, or 38% through an interest free loan. During this payout period and continuing today, the District enjoys some of the lowest water rates in the State, since they have been heavily subsidized by the Federal Government. If the District

had even paid a nominal rate of interest, say 5%, the interest alone on this loan would have amounted to $1,775,594.55. By adding this amount to the initial public cost, the public has invested almost $4 million in this project as a capital expense, not to mention other costs for maintenance and upgrades. In other words, the District has not even come close to paying for the project, even in 1940 dollars. To consider this as full payment for this reservoir is clearly untrue.

INCOME FROM THE RESERVOIR

As part of the negotiations between the District and the Bureau of Reclamation, the District agreed to pay the sum of $492,000 to the U.S., but this was not intended to be payment for the land or the reservoir. This settlement was intended to offset a portion of the income from the power and water sales which the U.S. would lose if this income were to stop as a result of the transfer. In other words, this was an attempt, however small, to reimburse the taxpayers' interest in a limited portion of this income stream into the federal treasury. The reservoir derives other income from the reservoir and the surrounding lands,including: boat permits, marina licenses, restaurant licenses, and "augmentation fees" from the surrounding landowners' own private wells. The District also receives public help in improving the reservoir from other agencies including the Colorado Lottery. Unfortunately both the House and Senate failed to account for these continuing income streams in their final markups of the bills, expressly deleting even the $492,000 payment previously agreed upon as fair by both the Bureau of Reclamation and the District.

FAIR MARKET VALUE

What is the fair market value of Vallecito Reservoir today? The value of the reservoir itself is very difficult to ascertain, however, there is evidence that the Federal Government is preparing to pay many millions of dollars to acquire Tremaine Lake, near Flagstaff, Arizona and more millions for surface recreation rights only to the Eagle Nest Lake, New Mexico. In my opinion, based on these proposed purchases, present day construction and replacement costs, current selling prices of lakefront property and the unique qualities of Vallecito Reservoir, the fair market value of the reservoir today would probably approach 50 million dollars, with the surplus lands adding an additional 45 million dollars. The recreational facilities would most likely add about 5 million dollars to the value, while the oil, gas and mineral resources are unknowable at this time, but could be tremendous. The value of the federal water rights is likewise unknown, also potentially large. This leads to a nominal fair market value today of 100 million dollars, not including the mineral and water rights.

Should an entity receiving a resource like Vallecito Reservoir be expected to pay fair market value? Since the reservoir would become an asset of the recipient, which could be collateralized for loans and sold in whole or in part to benefit private parties and district landowners as discussed later, it is entirely proper for the recipient to pay full fair market value, less the amount previously paid. The Congress has passed numerous laws providing that when land is sold to the private sector, full fair market value must be paid. (See FLPMA, 1976) Payment of fair market value would help reimburse the public for its investment and ensure that the U.S. Treasury receives value for the loss of this asset. The money received could then offset money spent for other purchases of land and lakes in similar purchases, as is currently proposed by Congress and the Administration. It could also help buy Vallecito Reservoir back, if the public clamor was great enough.

WHAT COULD GO WRONG?

It is the nature of this particular district which causes alarm. The Colorado Supreme Court, in its September

14, 1998, Orchard Mesa v. Campbell, 97SA303 (copy attached as Exhibit A) ruling, reaffirmed earlier rulings that Colorado irrigation districts are not local governmental entities, but exist for the benefit of the landowners within the district. (Vallecito Reservoir is not located within the District and has little or no voice in its decisions) They are not arms of the state government, nor a governmental entity at all, and have very few powers of governmental entities, but do have the ability to levy ad valorem taxes on their members. The Supreme Court found that it was dispositive that the electors of an irrigation district, in comparison to public entity electors, could be: (1) nonresidents, possibly from other states, (2) corporations and other non-natural persons, (3) unregistered voters, (4) entitled to more than one vote per person, based on number of acres owned, and (5) able to vote by proxy. This should put to rest the notion that Colorado irrigation districts are divisions of the State and are somehow public entities in line with the downsizing government concept. A gift to a Colorado irrigation district privatizes the gift.

SALE OF ASSETS

The State of Colorado has specified the operation of its irrigation districts in Section 37 of the Colorado Revised Statutes. (See Exhibit B, copy attached) These statutes provide for the sale and transfer of any assets owned by the district in the following ways: (1) Districts can sell excess land by a vote of its board of directors and the signature of the president, with no public input or protection (CRS 37-41-156). (2) Districts can sell or dispose of "all or any part or all of the irrigation works, franchises, water rights, or other property of the district when authorized so to do by the vote of a two-thirds majority of the legally qualified electors…." (CRS 37-43-124), (3) Voluntary dissolution of districts is allowed upon a vote of the electors (CRS 37-43-158) and (4) Involuntary dissolution is allowed through the courts (CRS 37-43-167). In summary, a transfer to the District is a transfer to a private entity, which can easily further divest the assets to others for profit. There is no provision in State law which provides for the District's assets to be transferred to the State of Colorado or any other public agency. Indeed, if the District were to get into financial difficulty, they would lose the ability to control their own assets, making all promises of protection for others null and void.

WHERE WOULD THE MONEY GO?

Further cause for alarm is raised when the above statutes are read with the provisions of CRS 37-43-167, quoted in full, as follows: " Disposition of Surplus. Whenever all the property of such irrigation district has been disposed of and all indebtedness and obligations thereof, if any, have been discharged, the balance of the money of said district shall be distributed to the assessment payers in said district as named in the last assessment roll in the proportion in which each has contributed to the total amount of said assessments." In other words, the District's landowners could vote to disband, sell the reservoir and other assets, and distribute the money to themselves on the basis of the number of acres owned. For example, an owner like U.S. Senator Ben Nighthorse Campbell, would be entitled to 110 shares of the proceeds, upon dissolution, since he owns 110 acres within the District.

EVOLUTION OF THE DISTRICT

The Pine River Irrigation District is in the process of evolving from an agricultural group to a public water supply organization. Many of the District landowners are subdividing their farms into homesites, causing less need for agricultural water and more for domestic uses. The District is currently applying for millions of dollars in government loans and going deeply into debt to form the Vallecito Water Company (the "VWC"), which would be a separate organization to provide domestic drinking water to nearby areas. It is possible that the District would become insolvent or vote to disband, while the VWC would continue to operate.

Under this scenario, the water would still flow, but Vallecito Reservoir would belong to the highest bidder, perhaps a wealthy entrepreneur or major hotel chain, while the proceeds would be divided among the District's landowners. The result would be as follows: (1) The public's and the United States' interest would have vanished, (2) Private owners would control the reservoir, (3) The landowners of the District would receive a tremendous windfall. As a reading of the attached statutes would indicate, this scenario is entirely possible, notwithstanding the protestations of the District's current leaders.

THE COMMUNITY

There is a document purporting to be a community endorsement of the transfer by the Vallecito community. This document was a result of the District's pressure for immediate action in the dead of winter in 1998, when most residents were elsewhere. When the community found out about this document, they voiced extreme concern that the contract gave the District everything it wanted, i.e. endorsement, but the promises of the District were illusory or impossible. This resulted in over 700 persons signing a petition asking for protection. To date the District has refused to amend the agreement to make it more definite or enforceable. The Vallecito Community has voted in mass to support the transfer, but only after it can be assured that it will be protected against privatization, insolvency and dissolution of the District. At this time, adequate protection does not appear to be possible. I am hereby presenting to the Subcommittee copies of the petition signed by citizens who have grave concerns for this transfer and the future of the beautiful Vallecito Reservoir. Please help protect these people and the future of Vallecito Reservoir.

LIABILITY

It has recently come to my attention that the issue of liability and resulting liability insurance for the District and any proposed Recreation Management Organization, as tentatively agreed to by the District, would be prohibitively expensive. As a result of this liability problem, it is possible that the public aspects of the reservoir would be curtailed almost immediately after the transfer for this reason, to the detriment of the public and the community. This also makes most, if not all, of the promises of the District with the County and the Community impossible to achieve. Indeed, the management of important recreational facilities like Vallecito Reservoir may not be possible to manage, except by the public sector.

THE COUNTY

La Plata County held a public meeting to discuss this transfer and heard a number of citizens' concerns. The County Commission, by a 2 to 1 vote, decided to support the transfer, but only if protections for the public and the community were in place in the legislation. None of the bills addressed these protections.

ALTERNATIVE SUGGESTIONS

Alternatives exist to the proposed course of action which would most likely be acceptable. First, a transfer to the U.S. Forest Service would be a natural addition to their present ownership in this area, similar to nearby Lemon Reservoir, and second, the State of Colorado would be an excellent recipient of this resource. Since the State is already exercising considerable control over the operations of the reservoir and has a Parks and Recreation Division ready to operate the facility, it would be a natural and logical owner. This would also achieve the "Downsizing of Government" objective, while protecting the public's interest.

CONCLUSION

I call for a full field hearing on Reclamation Transfers in general, and the Pine River Irrigation District in particular. The facts I have recited in this testimony are true and are serious reason to ponder the reasonableness of the Pine River transfer. Since there is no way to undo this action once it has been taken, I urge caution prior to passage of any legislation concerning these transfers. The public must be protected and assured that its interests are safe for the enjoyment of their children and grandchildren. There are many reasons to oppose this transfer and few reasons to grant it. I would urge that you take no action rather than risk the ruin of this pristine area. The status quo is actually working rather well. Thank you for the opportunity to address the Water and Power Subcommittee.

EXHIBIT A-

To the testimony of Kent E. Johnson before the United States House of Representative, Resources Committee, Water and Power Subcommittee.

(Unless noted, only change- underlining for emphasis)

SUPREME COURT, STATE OF COLORADO

No. 97SA303

September 14, 1998

CHARLES L. CAMPBELL, HARRY C. TALBOTT, RONALD R. CRIST, WILLIAM R. EMBLAD, AND GARY CRIST,

Plaintiffs,

v.

ORCHARD MESA IRRIGATION DISTRICT; MUTUAL MESA LATERAL ENTERPRISE; FARM SERVICES ADMINISTRATION (formerly Agricultural Stabilization and Conservation Service), an agency of the United States Department of Agriculture; the NATURAL RESOURCES CONSERVATION SERVICE (formerly Soil Conservation Service), an agency of the United States Department of Agriculture; and the COLORADO WATER CONSERVATION BOARD, an agency of the State of Colorado,

Defendants.

(Law Firms and intervenors omitted)

EN BANC CERTIFIED QUESTIONS ANSWERED

JUSTICE BENDER delivered the Opinion of the Court.

We agreed to answer three questions certified by the United States District Court for the District of Colorado (district court) concerning claims relating to the formation and funding of a water activity enterprise.(1) We hold that an irrigation district is not a "district" for purposes of Article X, Section 20 (Amendment 1) of the Colorado Constitution because it is not a local governmental entity thereunder.(2) Although an irrigation district is a public corporation that exercises limited public powers, its overall purpose is to provide ways and means of supplying water to lands for the benefit of landowners within the district. Due to our disposition of this initial issue, it is unnecessary to respond to the remaining certified questions.

I. BACKGROUND

As background for our legal analysis, we discuss the pertinent facts and legal issues stated by the district court in its certification order.(3) On March 7, 1904, the Orchard Mesa Irrigation District (irrigation district) was formed pursuant to the act of April 12, 1901, entitled "An Act to provide for the organization and government of irrigation district . . . ." In 1955, the qualified electors of the irrigation district determined by election that the irrigation district would be governed by the Irrigation District Law of 1921. See 34-42-101 to -141, 10 C.R.S. (1997).

On October 3, 1996, the board members of the irrigation district formed the Mesa Mutual Lateral Enterprise (enterprise).(4) The plaintiffs, who are landowners and taxpayers within the irrigation district, filed suit against the irrigation district and others, claiming that the irrigation district is a local governmental entity whose actions are subject to the restrictions of Amendment 1. According to the plaintiffs, the defendant's formation and funding of the enterprise violated Amendment 1.(5) The defendants counter that an irrigation district is not a local governmental entity within the meaning of Amendment 1 because it serves the private interests of landowners. The district court certified this issue to us based on its determination that there was no controlling Colorado precedent. With this background in mind, we now examine the first certified question of whether irrigation districts are "districts" subject to the limitations of Amendment 1.

II. ANALYSIS

The first step in reviewing an alleged violation of Amendment 1 is to examine the terms of the amendment itself and apply its provisions according to its clear terms. See City of Aurora v. Acosta, 892 P.2d 264, 267 (Colo. 1995). The provisions of Amendment 1 require "districts" to hold elections to obtain voter approval in advance for increases in taxes and spending and direct or indirect debt increases. See Colo. Const. art. X, 20. "Districts" are defined in Amendment 1's express language to include "the state or any local government, excluding enterprises." Colo. Const. art. X, 20, cl. (2)(b). Since both parties concede that a 1921 Act irrigation district is neither an enterprise nor an agency of the state,(6) our inquiry focuses on whether a 1921 Act irrigation district is a local governmental entity for purposes of Amendment 1.

Turning to the text of Amendment 1, we note that the term "local government" is not defined. In interpreting the meaning of "local government," we rely upon general rules of statutory construction. See Nicholl v. E-470 Public Highway Auth., 896 P.2d 859, 867 (Colo. 1995); Bickel v. City of Boulder, 885 P.2d 215, 228 n.10 (Colo. 1994). Our duty in construing Amendment 1 is to give effect to the electorate's intent in enacting the amendment. See In re Interrogatories Propounded by the Senate Concerning House Bill 1078, 189 Colo. 1, 7, 536 P.2d 308, 313 (1975). We must, therefore, construe the term "local government" in light of the objective Amendment 1 sought to achieve. See Acosta, 892 P.2d at 267.

Amendment 1's objective is to prevent governmental entities from enacting taxing and spending increases above Amendment 1's limits without voter approval. See F.T. Havens v. Board of County Comm'rs, 924 P.2d 517, 522 (Colo. 1996).(7) Guided by this objective, we now determine whether irrigation districts are local governmental entities within the meaning of Amendment 1's election requirement.

Irrigation districts were created "to provide means . . . for bringing into cultivation the arid lands of the state and making them highly productive by the process of irrigation." Anderson v. Grand Valley Irrigation Dist., 35 Colo. 525, 532, 85 P. 313, 315 (1906). To accomplish this objective, the legislature authorized irrigation districts to levy and collect special assessments at the expense of those landowners whose lands were serviced by irrigation waters. See 37-42-126 to - 127, 10 C.R.S. (1997).

However, legal authority to levy and obtain collection of special assessments does not transform an essentially private entity into a governmental entity for Amendment 1 purposes. We have repeatedly said that irrigation district special assessments are not general taxes characteristic of government. See Interstate Trust Co. v. Montezuma Valley Irrigation Dist., 66 Colo. 219, 224, 181 P.2d 123, 125 (1919) (holding that the taxes levied by irrigation districts are local or special improvement assessments and not general taxes); see also People v. Letford, 102 Colo. 284, 303, 79 P.2d 274, 284 (1938) (same). While general taxes exact revenue from the public at large for general governmental purposes,(8) an irrigation district's special assessment benefits specific landowners whose land the district supplies with water.(9) These special assessments are designated to pay the expenses, including servicing debt, incurred in irrigating the land. The assessments are levied in proportion to land ownership and are paid only by the landowners who receive the benefits. In summary, a 1921 Act irrigation district serves the interests of landowners within the district and not the general public.(10) As such, it cannot be said that an increase of an irrigation district's special assessment increases the burden of the taxpaying public which Amendment 1 sought to regulate.

Supporting our conclusion that an irrigation district is not a governmental entity for Amendment 1 purposes is the difference between persons eligible to vote in an irrigation district election and persons eligible to vote in a district under Amendment 1. Amendment 1 provides that "all registered voters" within a local governmental district are able to vote on taxing and spending increases. See Colo. Const. art. X, 20, cl. (3)(b). Amendment 1 elections invoke the voter eligibility provisions of Colorado Constitution Article VII, Section 1. An Amendment 1 voter must be a citizen of the United States, eighteen years of age or older, a resident of the state for thirty days immediately preceding the election, a current resident of the precinct in which the election takes place, and a registered elector in the precinct. See id. A voter in the elections governed by Amendment 1 also may have to comply with additional qualifications imposed by the legislature. See 1-7- 103(1), 1 C.R.S. (1997). In contrast to these requirements, a qualified voter in an irrigation district is not required to be a natural person. These elections include nonresident landowners,(11) all entities owning land within the district,(12) and proxy voters.(13) Thus, nonresident, unregistered voters, who own land irrigated by the irrigation district, are eligible to vote in irrigation district elections.(14) Also, irrigation district elections depart from the traditional "one person, one vote" requirement for governmental elections.(15) A landowner in an irrigation district may cast a number of votes equal to the number of irrigated acres it owns within the district.(16)

As our discussion demonstrates, we conclude that the private character of a 1921 Act irrigation district differs in essential respects from that of a public governmental entity exercising taxing authority contemplated by Amendment 1. An irrigation district exists to serve the interests of landowners not the general public. Rather than being a local governmental agency, a 1921 Act irrigation district is a public corporation endowed by the state with the powers necessary to perform its predominantly private objective.

III. CONCLUSION

Accordingly, we hold that an irrigation district is not a local government within the meaning of Amendment 1's taxing and spending election requirements. Because of our disposition of this issue, we deem it unnecessary to respond to the remaining certified questions.

(Some citations have been omitted)

6 We have previously recognized that "irrigation districts are not agencies of the state." Logan Irrigation Dist. v. Holt, 110 Colo. 253, 260, 133 P.2d 530, 533 (1943).

15 The "one person, one vote" principle originated in the United States Supreme Court's decisions of Baker v. Carr, 369 U.S. 186 (1962), and Reynolds v. Sims, 377 U.S. 533 (1964).

16 See 37-42-107(3), 10 C.R.S. (1997) (number of votes per land owner in organization vote is equivalent to total number of acres owned by the landowner within the proposed district).

EXHIBIT B -

To the testimony of Kent E. Johnson before the United States House of Representative, Resources Committee, Water and Power Subcommittee.

COLORADO REVISED STATUTES

IRRIGATION DISTRICTS

(Only changes- Section headings and underlining for emphasis)

SALE OF PROJECT LAND

37-43-124 - Sale of water rights and property. The board of directors of any irrigation district may sell or dispose of any part or all of the irrigation works, franchises, water rights, or other property of the district when authorized so to do by the vote of a two-thirds majority of the legally qualified electors of the district, in the manner and upon the conditions provided in section 37-43-125, and the authority so vested in the board of directors shall be and remain effective until such sale is fully consummated, unless previously

revoked by the vote of a majority of the qualified electors of the district or such sale fails by act of the purchaser.

SALE OF EXCESS LAND

37-41-156 - Sale of realty not needed. The board of directors of any irrigation district organized under and subject to the provisions of this article may sell, dispose of, and convey any real property of the irrigation district not needed for the use of such irrigation district nor essential to its operation, from time to time as said board by resolution may direct, either by public or private sale, and without any appraisement thereof, at such price and upon such terms as said board may determine, and without any authorization from the electors of such irrigation district.

DEEDS

37-41-157 - President to execute deeds. The president of the board of directors of any such irrigation district, when authorized by resolution of the board of directors, is empowered to execute, acknowledge, and deliver all deeds of conveyance necessary to convey such property to the purchaser thereof, such deed of conveyance to be attested by the secretary of such irrigation district under its seal, and when so executed such deed of conveyance shall be held to convey the entire title of such irrigation district to the purchaser thereof.

NO REVIEW

37-41-159 - Findings of board conclusive. The board of directors by resolution shall find and determine that any such real property that it proposes to sell or dispose of is not needed for the use of such irrigation district and is not essential to its operation, and such finding and determination shall be conclusive upon such irrigation district, and the purchaser shall not be required to show or prove that such property is not needed for the use of such irrigation district or essential to its operation, and such purchaser shall not be required to see that any moneys paid in pursuance of said sale is paid into the general fund of such irrigation district.

DISSOLUTION OF IRRIGATION DISTRICTS- ALLOWED

37-43-156 - Irrigation districts may dissolve. Any irrigation district organized under the laws of the state of Colorado may be dissolved in the manner provided in sections 37-43-156 to 37-43-166.

ELECTIONS -VOLUNTARY

37-43-158 - Dissolution - special election. (1) Upon the filing of said petition with the board of directors of said district, the board shall call a special election, at which shall be submitted to the qualified electors of such district the question whether or not said district shall be dissolved, its indebtedness liquidated, and its assets distributed in accordance with the plan so proposed or, in case no plan has been proposed, in accordance with a plan which shall be proposed by said board of directors in the notice of the election. No such election shall be called until either the assent of all holders of valid indebtedness against the district known to the directors is obtained, or else provision shall be made in said plan for the ultimate payment or liquidation of the claims of such nonassenting holders, either in money or, in the alternative, until all tax levies required by the laws of the state of Colorado for the payment of such indebtedness have been made; except that action shall not be taken upon said petition and said election called, in case contract has been made between the district and the United States, until the secretary of the interior has assented thereto in writing and such assent is filed with the board of directors.

(2) Notice of such election must be given in the same manner and for the same time as notice of election of directors of an irrigation district under the laws of the state of Colorado. Such notice must specify the time of holding the election, the fact that it is proposed to dissolve the district, and a brief summary of the plan proposed for liquidating all its indebtedness or for the making of all tax levies required by the laws of the state of Colorado for the payment of such indebtedness and for disposing of its assets. Such election shall be held and the result thereof determined and declared in all respects as nearly as practicable in conformity with the provisions governing the election of directors in irrigation districts. At such election the ballot shall contain the words "Dissolution of the District - Yes" and "Dissolution of the District - No" or words equivalent thereto.

SOLVENT DISTRICT- NO COURT NECESSARY

37-43-168 - Procedure where district is solvent. Irrigation districts which are free from debt may be dissolved under sections 37-43-156 to 37-43-168. In such cases, it shall not be necessary that the proceedings for the dissolution of said district shall be passed upon

by the district court, as prescribed in section 37-43-159, but, after the holding of the election in the district and the declaration of the result, a certificate, signed by the president and secretary of the district, shall be filed with the county clerk and recorder of each county in which the district is situated, which certificate shall state the number of signers to the petition for dissolution and shall recite the calling of an election, the holding of said election, and the result thereof. Said certificate shall bear the seal of the district. It is the duty of said respective clerk and recorders to record all such certificates in the records of the respective counties, and, upon filing of such certificate with the said county clerk and recorders the dissolution of said district shall be complete.

SALE

37-43-129 - Decree of sale. The court in its decree has the power to make the orders necessary to carry out said proposition or plan for the sale of the dams, reservoirs, canals, franchises, water rights, or other property of the district; but no plan for the sale of the entire property of irrigation districts including the dams, reservoirs, canals, franchises, water rights, and other property of the district shall be approved by the court which does not provide for the ultimate payment or liquidation of all the indebtedness of the district and adequate security for the holders thereof, and as well protect the landowners of said district.

DISSOLUTION OF IRRIGATION DISTRICTS- INVOLUNTARY

37-43-163 - Decree of court. (1) The court in its decree shall have power to make the orders necessary to carry out said proposition or plan for the liquidation of the indebtedness and distribution of the property of said district, including the right to apportion any indebtedness found due, and to declare said portions of any said indebtedness liens upon the various parcels and lots of land within the district, and may decree a sale or exchange of its assets in such manner as may effectuate said proposition, as the said court may judge best, and as, in the opinion of the court, provides an adequate security for the ultimate payment or complete liquidation of all the indebtedness of said district. Said sale or exchange of said assets may be made either in one lot or in such parcels as may be provided, and the decree may provide for conveyance of said irrigation system, including the dams, reservoirs, canals, franchises, and water rights, and also of all of the other assets of the district and for the exchange thereof for outstanding indebtedness and the cancellation of such indebtedness. Said court may also provide by decree for the ultimate payment of all or any part of the indebtedness of said district by directing a continuance of the levy and assessment of taxes upon the lands included in said district in the manner provided by the laws of this state in relation to irrigation districts.

SURPLUS MONEY DISPOSITION UPON DISSOLUTION

37-43-167 - Disposition of surplus. Whenever all the property of such irrigation district has been disposed of, and all indebtedness and obligations thereof, if any, have been discharged, the balance of the money of said district shall be distributed to the assessment payers in said district as named in the last assessment roll in the proportion in which each has contributed to the total amount of said assessments.

# # #